

## **The complaint**

Mrs A and Mr D complain that National House-Building Council (“NHBC”) unfairly declined a claim they made under their new home structural warranty.

Mrs A has primarily dealt with things, so for simplicity I’ll refer to her only.

## **What happened**

The circumstances of this complaint aren’t in dispute, so I’ll summarise the key points:

- Mrs A held a new home structural warranty with NHBC. She got in touch with it about a number of potential building defects in 2019.
- NHBC inspected the problems under its Resolution service and wrote a Resolution report. It found some, but not all, of the problems required the builder to take action.
- That included asking an independent electrical consultant to report on the installation and whether it complied with Building Regulations. The builder was given until late November 2019 to take these actions.
- The builder didn’t meet that deadline and NHBC stepped in to take over the claim. It arranged for the electrics to be reviewed several times. Although it accepted the electrical system hadn’t been installed in line with best practice, it said it did comply with Building Regulations.
- Mrs A didn’t think this was fair and questioned whether the system met all the relevant standards. NHBC maintained it had. It accepted there had been delays and offered Mrs A £150 compensation.
- Our investigator thought NHBC had treated Mrs A fairly. He said NHBC’s standards were performance based and had been met, even if some of the technical requirements hadn’t been.
- Mrs A disagreed and made a number of comments. Our investigator wasn’t persuaded to change his mind.

I issued a provisional decision in which I said:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

### *Warranty cover*

The claim was made within two years of the completion date. That means the relevant part of the warranty is section 2. Under this section, NHBC may offer its Resolution service. If NHBC thinks the builder failed to meet the NHBC requirements,

it will tell the builder to take action by a certain date. If that date passes without the action being completed, NHBC will step in and complete the actions.

This Service has jurisdiction to consider how NHBC handled things from the point the builder's deadline passed without it completing the action.

At that point, the builder had been told to have the electrics reviewed by an independent consultant with regard to compliance with Building Regulations. There were other actions for the builder to take but they're not the subject of this complaint, so I haven't considered them.

In summary, the warranty provides cover where the builder failed to meet the NHBC requirements. These requirements are subject to supporting guidance and performance standards. If NHBC's performance standards have been met, the relevant requirements are also deemed to have been met.

NHBC says performance standard 8.1.7 is relevant here. That says electrical installations shall be provided in accordance with relevant regulations, codes and standards. And it will ensure safe and satisfactory operation. The standard specifies that electrical systems should comply with BS7671.

Mrs A says NHBC has failed to meet two of its requirements: R1, which requires the builder to meet statutory requirements, including Building Regulations. And R4, which requires the builder to carry out work in a proper, neat and workmanlike manner. She's also questioned whether the standards set out in BS7671 have been met.

### *Electrical investigation*

In 2019, an electrician inspected the electric system. In summary, they noted a number of problems they described as 'housekeeping issues', mostly to do with the way the cables had been arranged. But overall they didn't highlight any significant issues that might cause harm.

In 2020, another electrician inspected the system. They did so on behalf of an industry recognised professional body, N. Their report detailed 'departures from BS7671' by the builder. These observations were broadly in keeping with the first and noted some 'actions required'. I understand these actions were to comply with BS7671.

Later in 2020, NHBC asked a third electrician to review the reports and recommend what work, if any, was required to ensure the system was operating safely and complied with Building Regulations. The electrician thought all relevant regulations had been complied with. And whilst they saw evidence of 'much poor workmanship' they didn't think the regulations protected against that as long as the system was working as it should and wasn't dangerous or potentially harmful.

NHBC says these comments show performance standard 8.1.7 was met – the system is functioning safely and without breaching any regulations. And because its performing as it should, it meets the requirements.

R1 and the performance standard overlap, as they both require adherence to relevant regulations and standards. I've considered the opinions and comments of the three electricians. They all had similar findings so I'm satisfied it's fair to treat them as being an accurate reflection of the condition of the system. None said regulations had been breached. The second electrician thought the standards set out

in BS7671 hadn't been met. The others didn't comment on these standards one way or the other. But the third said 'full knowledge of the regulations can only be provided by a direct representative of [N]'.

Based on the comments of the electricians, I think it's clear the positioning of the cables isn't in line with their expectation of best practice or usual levels of workmanship. NHBC hasn't disputed this. And whilst regulations may have been met, the standards of BS7671 haven't been. Despite that, all the evidence shows the system is performing adequately – each of the electricians found it was functioning broadly as it should do and was safe.

Taking everything into account, I'm not persuaded 8.1.7 has been fully met. I recognise the system is performing satisfactorily and is safe. And the evidence shows its compliant with Building Regulation. However, its not compliant with BS7671 – which this performance standard specifically says it should be.

R1 says NHBC will 'generally accept work that accords with relevant Building Regulations / Building Standards'. The evidence shows the work was consistent with Building Regulations – but not Building Standards. So I'm not persuaded R1 has been met. R4 requires the work to be carried out in a proper, neat and workmanlike manner. Given the performance standard hasn't been met, and the numerous problems highlighted by N, I'm not satisfied R4 has been met either.

NHBC's argument is essentially that the system is meeting the performance standard and *therefore* it meets the requirements – even if there are some problems with it. But as the standard requires the system to be compliant with BS7671, which it isn't, I don't think it's fair to say the performance standard has been met.

As a result, I'm not satisfied the system satisfies NHBC's requirements. Accordingly, I think NHBC should deal with the problems highlighted by N by carrying out or paying to carry out the actions it required.

### *Timescale*

NHBC accepted there were delays in relation to the electrics and offered Mrs A £150 compensation.

It took a long time from the point the builder missed the deadline, in November 2019, to January 2021, when NHBC provided an answer on the electrics to Mrs A. Some of this was due to the impact of Covid 19 and associated restrictions and precautions which was beyond NHBC's control. And some of the time was also needed to check the system and explore the technical matters. It was reasonable for NHBC to spend time investigating that initially, although I think it should have done more to act on N's findings sooner. Had it done so, it would have reached the current position much earlier. And that would have lessened the distress and inconvenience avoidably suffered by Mrs A.

Taking all of that into account, I'm not satisfied £150 is sufficient compensation. I'm satisfied a total of £750 would be a reasonable and proportionate figure. If NHBC has already paid £150, it can deduct that and pay the remaining £600.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Neither party commented on or challenged any of the findings in my provisional decision.

As a result, I don't see any reason to change my findings or comment on them further.

### **My final decision**

I uphold this complaint and require National House-Building Council to:

- Carry out or pay to carry out the actions required by N
- Pay a total of £750 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr D to accept or reject my decision before 3 October 2022.

James Neville  
**Ombudsman**